

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

OA No.380/2011

**Nb Sub. Manphool Singh**

.....Petitioner

**Versus**

**Union of India & Ors.**

.....Respondents

**For petitioner:** Mr. K. Ramesh, Advocates.

**For respondents:** Mr. Ankur Chibber and Ms. Aakriti Jain, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE N.P. GUPTA, JUDICIAL MEMBER.**

**HON'BLE LT. GEN. M.L. NAIDU, ADMINISTRATIVE MEMBER.**

**ORDER**

**26.09.2012**

1. By this petition, the petitioner claims to be granted anti dated seniority in the rank of Naib Subedar, at par with his batch mates to 2001-2002.
2. The facts as alleged by the petitioner are, that he was enrolled on 09.12.1985, he was promoted as Naik in 1988, and Havildar on 31.01.1992. In August-September 1993, he was sent for ASC (NCOs) Supply Course, wherein he got poor grading. Thereafter, he passed the promotion cadre course from Havildar to Naib Subedar in 1998, and his batch mates were promoted to the rank of Naib Subedar in 2001-2002. Petitioner was not promoted in view of his having obtained 'EZ' grading in ASC (NCOs) Supply Course, which he had done in 1993.
3. The petitioner seeks to challenge this aspect also, on the anvil of this being not part of the promotion policy letter dated 10.10.1997, in as much as, according to the petitioner, all other criteria relevant for the purpose of consideration for promotion to the rank of Naib Subedar were fulfilled by him. According to him, the attainment of a particular merit in grading course is not one of the requirements of this policy. It is then alleged that he was detailed

for the said course i.e., ASC (NCOs) Supply Course from 16.11.2007 which course was from 17.03.2008 to 17.05.2008, which he qualified with grading 'BY' and thereafter based on his having so qualified, he was promoted in the rank of Naib Subedar on 06.08.2008. In that view of the matter, he claims seniority at par with his batch mates.

4. A reply has been filed by the respondents contending inter-alia that he was screened for promotion to the rank of Naib Subedar alongwith his batch mates by the DPC held on 29.03.2000, wherein he was found unfit, due to having obtained 'EZ' grading in ASC (NCOs) Supply Course in accordance with para 2(b) of IHQ of MoD letter dated 27.11.1991, laying down the minimum acceptable grading, rendering the incumbent to be eligible for promotion to the next higher rank. Then it is pleaded that as per the existing policy, only one chance was to be given to each individual to attend the said ASC (NCOs) Supply Course and to earn minimum grading of 'CEE' and above. However, number of representations were received from the units by ASC Records for making provision for re-detailment of Havildars for the mandatory courses for second time, who have obtained below average grading and have been superseded for promotion. There upon, the matter was taken up, and the IHQ of MoD vide letter dated 26.06.2005, provided one more chance to attend the said course, provided the individual himself volunteers for the same. And on receipt of the said letter the office initiated the case with the unit concerned to forward volunteer certificate from the affected individuals, if they were desirous to undertake the said trade course. The petitioner accordingly submitted the said certificate, and on receipt thereof, he was detailed to attend immediately next available ASC (NCOs) Supply Course

wherein he obtained 'BY' grading. Then he was again screened by the DPC on 13.06.2008 and being found fit, he was promoted.

5. So far as the aspect of this requirement being not incorporated in the letter of 10.10.1997 is concerned, it is pleaded that this aspect was already covered by the Army Order 45/80, as amended vide Army Order 12/09, and IHQ of MoD letter dated 27.02.1990, laying down the mandatory requirements for promotion to the rank of Naib Subedar, which includes obtaining minimum particular grading in ASC (NCOs) Supply Course. Various other pleadings have also been taken, which need not detain us.

6. Thus, after going through these pleadings, and the rejoinder, and after considering the submissions of the learned counsel for the parties, what we find is that earning particular minimum grading in this ASC (NCOs) Supply Course was the minimum pre-requisite qualification for consideration for promotion to the rank of Naib Subedar. Obviously admittedly, the petitioner was not fulfilling the same, at the time when the petitioner initially earned lower grading, the provision existed for giving only one opportunity. Meaning thereby, that if one does not earn a particular required grading, one loses the chance of becoming Naib Subedar. It appears that only by way of benevolence, that the Ministry of Defence considered the matter and decided to give one more chance to the incumbents volunteering for the same, and the same was given to the petitioner at the earliest, which he availed, and cleared the course by earning the required grading, and was accordingly promoted.

7. The question then arises is, as to whether in such circumstances, the petitioner can claim seniority, to be ante-dated with the persons who had earlier earned the grading, which the petitioner failed to earn. It was on that stand point only, that when the matter was listed on 21.09.2012, learned



counsel for the petitioner was specifically put this question, and he sought time to satisfy, on the aspect of petitioner's entitlement on the basis of some legal authority. But the learned counsel was not able to show any authority on this point.

8. In our view, even on the first principles it would be clear that the seniority in the promoted rank is to be reckoned from the time of promotion, and if anyone in the feeding channel does not earn promotion for whatsoever reasons, in absence of any positive provision in that regard to the contrary, no incumbent, subsequently earning promotion, can be said to be entitled to claim ante-dated seniority, unless of course, the promotion happened to be denied for no fault of the individual himself.

9. In that view of the matter, we do not find any ground to interfere in favour of the petitioner. The petition thus has no force and the same is dismissed. No order as to costs.

**N.P. GUPTA**  
**(MEMBER)**

**M.L. NAIDU**  
**(Member)**

**New Delhi**  
**September 26, 2012**  
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